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FISCAL IMPACT STATEMENT

LS 6069

BILL NUMBER: HB 1437

NOTE PREPARED: Apr 3, 2007

BILL AMENDED: Mar 29, 2007

SUBJECT: Forensic Diversion.

FIRST AUTHOR: Rep. Foley

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It imposes additional requirements for a person to participate in a pre-conviction or post-conviction forensic diversion program. It provides that a person who has both a mental illness and an addictive disorder may participate in a forensic diversion program. (Current law allows a person who has a mental illness or an addictive disorder to participate.)
- B. It permits a court to allow a person by a prosecuting attorney's office or pretrial services bureau to utilize the facilities or programs offered by an alcohol and drug services program.

(The introduced version of this bill was prepared by the Forensic Diversion Study Committee.)

Effective Date: July 1, 2007.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Forensic Diversion Programs* – This bill gives sentencing courts the option to select whether eligible offenders are to be placed in a forensic diversion program, if the court operates one. (Under a recent court decision, offenders who meet all of the criteria to be in a forensic diversion program would automatically be entitled to be in a forensic diversion program.) Offenders who have a dual diagnosis for both mental illness and an addiction disorder would also qualify for a forensic diversion program.

Background on Forensic Diversion Programs – There are two types of forensic diversion programs. Pre-conviction programs are designed to treat adults with mental illnesses or addiction disorders who have been charged with a nonviolent misdemeanor or a Class D felony that can be reduced to a Class A misdemeanor. Class D felonies can be reduced to a Class A misdemeanor if the offender did not possess child pornography, commit domestic battery or commit a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor. In pre-conviction programs a person will plead guilty to a charge, participate in a program for a maximum three years, and if successfully completed will have the charge dismissed by the court.

Post-conviction forensic diversion programs are developed for offenders who are diagnosed with either a mental illness or an addiction disorder and has been convicted of committing a misdemeanor or felony that is not violent and did not involve drug dealing. In post-conviction programs, offenders plead guilty, participate in a forensic diversion program, and if successfully completed could avoid any prison time in Department of Correction (DOC) facilities.

Each county with a community correction advisory board is required to develop a plan for forensic diversion. Counties without a community corrections advisory board are permitted to organize a forensic diversion program advisory board. An individual may request treatment in a forensic diversion program, or a court may order an evaluation of the individual to determine if the individual is an appropriate candidate for the program.

In a recent decision, the Indiana Court of Appeals ruled that any person who qualifies for a forensic diversion program because of a mental illness or an addiction disorder diagnosis and has been convicted of a qualifying offense is entitled to have all or a portion of their sentence suspended. During the suspended portion of the sentence, the person is required to be placed on probation. As a condition of probation, the person is required to successfully participate and complete the program. Since an offender may need as many as 12 months to successfully complete the forensic diversion program, courts under current law would be required to allow a large number of offenders to be in the program.

(Revised) *Alcohol and Drug Services Program* – As of April 2007, certified court-established alcohol and drug services programs operate in 54 counties. The costs of these programs are largely covered by user fees (see *Explanation of Local Revenues*) although the county may have to absorb some of the costs for providing services for indigent offenders.

Explanation of Local Revenues: (Revised) *Alcohol and Drug Services Programs*: Under IC 12-23-14-16, the court may require a person to pay a fee of not more than \$400 for participation in a program.

State Agencies Affected: The Indiana Department of Correction is currently funding pilot programs in seven of the ten counties in Indiana that operate forensic diversion programs.

Local Agencies Affected: DOC reports that ten counties operate forensic diversion programs: Allen, Bartholomew, Delaware, Lake, LaPorte, Marion, Shelby, St. Joseph, Tippecanoe, and Vanderburgh Counties.

Information Sources: Deana McMurray, Department of Correction; Ruble v. State of Indiana 849 N.E. 2d 165 (Ind. Ct. App. 2006); <http://www.in.gov/judiciary/cadp/docs/admin/program-directory.pdf>

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